

Examiner's report

F4 Corporate & Business Law (HKG)

June 2014



General Comments

The examination consisted of ten compulsory questions. All questions were of equal weighting. Questions one to seven were knowledge type questions. Questions eight to ten were analysis type questions, which required the candidates to demonstrate their abilities to analyse a factual problem and apply what they had learnt to solve the problem.

The vast majority of candidates attempted all ten questions. Where questions were left unanswered by candidates, this appeared to be due to a lack of knowledge.

Candidates performed well on questions Q1, Q2, Q5(a), (c), Q6, and Q8. Most of the candidates performed particularly well in Q10. Most of the candidates did not perform well in Q3 and Q4. It is the examiner's observation the majority of candidates had not included the topics examined in Q3 and Q4 in their preparation for the examination.

A common issue which arose in candidate's answers was inadequate time management between questions, some candidates wrote far too much for some questions and this put them under time pressure to finish remaining questions.

Specific Comments

Question One

This question invited the candidates to demonstrate their knowledge of the common law rules adopted by the court in statutory interpretation.

The majority of candidates performed well on this question by stating in their answers all the rules being examined by the question. Nevertheless, there were a few candidates who appeared to have not revised this area by providing in their answers such information as the court system and the Basic Law.

Marks scored by the candidates were wide spread.

Question Two

The question tested the candidates' knowledge in the approach adopted by the court in determining the employment relationship between the parties to a contract.

This is a question on which the vast majority of candidates performed well. Most of the candidates were able to state at the very beginning of their answer the difference between a contract of service and a contract for services, though a number of candidates did not use the plural form of the word 'service' in the phrase 'contract for services'. Most of the candidates were able to explain quite clearly the three tests adopted by the court in distinguishing a contract of service from a contract for services.

There were candidates who did not perform well in this question by stating in their answers those protections given to an employee by Employment Ordinance (Cap 57), which are protection from statutory law.

As said, the performance of the candidates is the answer was sound in general. Marks scored by the candidates were widespread.



Question Three

The question invited the candidates to show their knowledge in the meaning of tort and the meaning of the common law duty of care. In marking part (b) of the question, consideration was given to relevant information from the candidates even though the information is not covered by the suggested answer.

Performance of the majority of candidates in this question was not satisfactory.

As regards part (a), which tested the candidates' knowledge in the nature of tort, most of the candidates provided information relating to the tort of negligence, which was examined in part (b) of the question. As a result not many of the candidates were able to score high marks in this part of the question.

In general, the performance of the candidates in part (b) was better than their performance in part (a). There were candidates who stated clearly the neighbour principle and went to explain clearly the facts considered by the court in determining the existence of the duty of care between two parties.

There were candidates mixing up the law relating to the existence of the duty of care with that of remoteness of damage by providing in their answers cases and knowledge relating to damages and causation, etc.

In part (b), the marks scored by the candidates were widespread.

Question Four

The question invited the candidates to show their knowledge of the power exercisable by the directors of a company as expressed in Table A of the Companies Ordinance (Cap 32).

This is another question on which the candidates did not perform satisfactorily. The majority of candidates answered the question by giving example as to what directors could do in matters relating to a company. Some candidates treated the question as one relating to the fiduciary duties of directors and provided information not relevant to the question.

From the approach of the candidates to this question, the examiner formed the view that most of the candidates had not prepared this area of law before they sat for the examination. The majority of candidates scored low marks in this question.

Question Five

The question was divided in to three parts and the candidates were asked to show their knowledge in matters relating to the meetings of a company.

Part (a) asked the candidates' to show their knowledge of the difference between an annual general meeting and an extraordinary general meeting. The majority of candidates appeared to have no problem in answering the question. Hence most of the candidates scored high marks in this part.

Part (b) tested the candidates' knowledge of special business. The performance of the candidates in general was not as good as their performance to part (a) of the question. Not many of the candidates were able to show exactly what special business was able. The majority of candidates scored low marks in this part of the question.

Part (c) invited the candidates' to show their knowledge of a special resolution. Similar to part (a), most of the candidates had no problem in answering the question by giving quite clear answering as to the requirements for passing a special resolution.

The overall performance of the candidates in this question was satisfactory. There were candidates who performed very well in the question and hence scored very high marks.



Question Six

The question invited the candidates to demonstrate their knowledge in the liabilities of the members of companies limited by shares in part (a), limited by guarantee in part (b) and companies with unlimited liabilities in part (c).

In all parts of the question, the vast majority of candidates were able to show in their answers their understanding between the liabilities of members of a company and the liabilities of the company. As regards part (b), not many of the candidates were able to show clearly in their answers about the liabilities of the members.

Most of the candidates could score high marks in this question. This is a question in which the majority of candidates' performed well.

Question Seven

The question was divided into two parts. Part (a) invited the candidates to show their knowledge of the impact of the winding-up process on the life of a company. Part (b) tested the candidates' knowledge of the difference between voluntary liquidation and compulsory liquidation.

As regards part (a), the majority of candidates were able to show in their answers the impact of the winding-up process on the life of the company by stating that the company is still in existence in the course of winding-up process.

As far as part (b) is concerned, most of the candidates demonstrated their general understanding of the knowledge in the area being examined. There were not many candidates who were able to make a comparison between the two types of liquidation process and hence could not point out the main difference between the two.

Marks scored by the candidates were widespread. There were candidates answering both part of the question extremely well and hence scored very high marks. In general, most of the candidates had a satisfactory performance in both parts of the question.

Question Eight

The question invited the candidates to demonstrate their knowledge about the formation of a contract and the revocation of an offer.

Most of the candidates performed well in this question. The majority of the candidates could demonstrate through their answers their understanding of the concepts being tested by the question by coming to the conclusion at the end of their answers that there was no contract between the parties involved.

The majority of candidates could also show that there were two offers, viz., one relating to the sale ('the first offer') and the other relating to the time for acceptance of the first offer ('the second offer'). Yet, not many of the candidates were able to explain clearly as to why there was no contract formed in relation to the second offer.

The performance of the candidates in the question was widespread.

Question Nine

The question invited the candidates to demonstrate their knowledge in the circumstances under which insider dealing is committed

From the candidates' answers, it is the examiner's view that most of the candidates had a general understanding as to what insider dealing was about by coming to the conclusion that insider dealing had been committed in



light of the facts from the problem scenario. However, not many candidates could supply in detail the statutory requirements for the commission of insider dealing.

The performance of the candidates in general was not satisfactory.

Question Ten

The question invited the candidates to show their knowledge about charges created by a company.

This is a question in which the majority of candidates performed well. Most of the candidates demonstrated their understanding in the area of law being tested by providing a clear explanation about the nature of a fixed charge and a floating charge and coming to a correct conclusion regarding the nature of the charge being created by the facts stated in the problem scenario.

Most of the candidates performed well in this question.